

## New Data Protection Provisions in Romania

Following the implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “GDPR”), which came into force on May 25<sup>th</sup>, 2018, the Romanian Data Protection Authority (the “Authority”) issued two decisions in respect to the processing of personal data, in line with the provisions of the GDPR.

Such decisions regulate (i) the procedure for performing investigations by the Authority, as well as (ii) the operations for which performing the data protection impact assessment is mandatory.

### 1. Decision regarding the procedure for performing investigations by the Authority

Decision no. 161/09.10.2018, published in the Romanian Official Gazette no. 892/23.10.2018 approves and describes the internal procedure of the Authority for investigating any breach of data protection, whether such investigation was started *ex officio* or following a complaint.

Such decision provides three types of investigations that can be performed by the Authority, respectively: (i) field investigations, (ii) investigations at the office of the Authority or (iii) investigations performed in writing.

### 2. Decision regarding the list of operations for which performing the data protection impact assessment is mandatory

Decision no. 174/18.10.2018, published in the Romanian Official Gazette no. 919/31.10.2018 provides a list of activities for which the controller has to perform a data protection impact assessment (“DPIA”).

Such list does not limit the range of operations for which the DPIA is necessary, respectively when, taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons.

The Authority decided that the following activities shall result in such a risk and, therefore, the DPIA is mandatory:

- (i) Processing of personal data in view of performing a systematic and exhaustive assessment of the personal aspects relating to natural persons, based on automated processing, including profiling, which is the basis for decisions that produce legal effects concerning the natural person or similarly significantly affects such natural person;
- (ii) Processing, on a large scale, of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation of a natural person or personal data referring to criminal convictions and crimes;
- (iii) Processing of personal data with the purpose of systematic monitoring of publicly accessible area on a large scale, such as video surveillance of commercial centers, stadiums, markets, parks or any such places;

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- (iv) Processing, on a large scale, of personal data of vulnerable persons, especially of underage persons and employees, through automated surveillance means and/or systematic recording of behavior, including for advertising, marketing or publicity purposes;
- (v) Processing, on a large scale, of personal data by innovatively using or implementing new technologies, especially if such operations limit the data subjects' ability to exercise their rights, such as the use of facial recognition techniques for granting access in certain areas;
- (vi) Processing, on a large scale, of data generated by sensor devices that send data via internet or by other means (such as smart TVs, connected vehicles, intelligent meters, intelligent toys, intelligent cities or any other such apps);
- (vii) Large scale and/or systematic processing of traffic data and/or location of natural persons (such as Wi-Fi monitoring, processing of geo-location data of public transport passengers or other such situations) when the processing is not necessary for providing a requested service to the data subject.

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